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DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			REICHLE, KARIN M	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/706,303	Applicant(s) MIZUTANI ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453-O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 6-25 is/are pending in the application.
- 4a) Of the above claim(s) 8,10,11,15-17,19,20,22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,7,9,12-14,18, 21 and 24-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/07,12-07, 1/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11-14-07 has been entered.

Response to Amendment

2. The following Office Action is based on the substitute specification and marked-up specification filed 11-14-07, including the abstract, the drawings filed 11-8-05, the claims filed 11-14-07 and the remarks filed 11-14-07.

Election/Restrictions

3. Claims 8, 10-11, 15-17, 19-20 and 22-23 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6-8-05. As set forth in such reply the finger insertion opening species of Figures 1-8, the bonding species of 13D and the mini-sheet species of Figure 14B were elected.

Specification

4. The substitute specification, including the abstract, filed 11-14-07 has not been entered because it does not comply with 37 CFR 1.121, e.g. doesn't show all additions by underlining, see, e.g., paragraph 1, the title between paragraphs 1 and 2, paragraphs 3, 4 and 9. Since the Figures as filed 11-8-05 are described by the not entered substitute specification these Figures have again not been approved. Therefore, see the discussion in paragraphs 4-9 *infra*.

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

Drawings

6. The drawings were received on November 8, 2005. These drawings are still not approved by the Examiner, see the discussion *supra*.

7. The drawings are objected to because in Figures 2-4, the labels X-X, Y-Y and Z-Z should be avoided. Also the cross-sectional lines, e.g. in Figure 1, X-X, Y-Y and Z-Z, should be denoted by Roman or Arabic numerals, not letters. Figures 13A-D do not show a diagram as set forth on page 15. In Figures 1-6 and 8, the line from 8 should be dashed to denote underlying structure. In Figures 10-12, 8 should clearly denote the restriction, e.g. a line from the numeral thereto rather than a general arrow. In Figure 20, the lines from 38 and 39 should be arrows. Figure 31 should be labeled PRIOR ART. In Figure 27, the numeral 6 should clearly denote the cavity. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to

the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

8. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: the abstract.

9. The abstract of the disclosure is objected to because the abstract should be limited to a single paragraph. Also terminology which can be inferred, e.g. "The present invention relates

to”, “according to the present invention”, should be avoided. Correction is required. See MPEP § 608.01(b).

10. The disclosure is objected to because of the following informalities: The specification is replete with informalities. For example: 1) On page 3, line 9, “Disclosure of the Invention” should be --Summary of the Invention--. 2) On page 31, line 19, “21” should be --38--. 3) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims is not commensurate in scope, see MPEP 608.01(d). (It is noted that the substitute specification filed 1-26-07 still did not provide such a Summary section.) 4) On page 18, line 8, “Best Mode of Carrying Out the Invention” should be --Detailed Description of the Invention--. 5) The use of a confusing variety of terms for the same thing should be avoided. See MPEP 608.01(o). For example, see title and page 1, lines 13-15, i.e. “Package” or “wrapping body” and “wrapping container”? The specification should be carefully reviewed and revised, as necessary, to overcome all the informalities. Applicant is thanked in advance for the cooperation in placing the specification in proper form.

Appropriate correction is required.

Claim Objections

11. Claims 1, 6-7, 9, 12-14, 18, 21 and 24-25 are objected to because of the following informalities: In claim 1, should lines 21-23 be --the opposite face near the second edge of the interlabial pad that are bonded to each other at least at a respective portion thereof-- and line 31 be --wherein the fold formed in the opposite face forms a protruding portion protruding from a

remaining portion of the--. In claim 21, line 3, “-expect” should be --expect--. Also the last two lines appear to be redundant, see claim 1, lines 7-8. Appropriate correction is required.

Claim Rejections - 35 USC § 112

12. Claims 7 and 24-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 7 still requires a pad as claimed in claim 1 wherein the cavity opening proceeds from the front edge of a mini sheet that is disposed a first specific percentage from a first edge of the pad and the finger restriction portion is disposed at a second specific percentage from the first edge. See Claim Language Interpretation section infra. While the original specification at page 8, lines 21-26, the paragraph bridging pages 29-30 and page 23, lines 19-22 disclose a pad as claimed in claim 1 with ranges of first specific percentages and ranges of second specific percentages or a first specific percentage from a front end and a second specific percentage from a rear end when in labial pads of certain ranges of length, this is not what is claimed. Where is a device as claimed in claim 1 in combination with such a first specific percentage and such a second specific percentage only disclosed in a single embodiment in the original application? For example, where does the original application disclose a pad of any length having an opening and restriction as claimed in claim 7? New claims 24-25 now require “a longitudinal length” of specific dimensions. While the original specification at page 29, line 18-page 30, line 2 and page 30, lines 12-19 disclose a specific longitudinal length having

such specific dimensions, this is not what is claimed. If Applicant maintains such language the portion of the specification which provides support for the full scope of the claimed combination in a single embodiment should be set forth. See also the Response to Arguments section infra.

Claim Language Interpretation

13. The claim terminology is interpreted in light of the specific definitions on page 5, lines 7-17. Any other claim language not specifically defined has been interpreted in view of the usual and common meaning of such, i.e. the dictionary definition. It is noted that the first and second edges at opposing ends on lines 5-6 are not required to be the terminal end edges of the pad nor has the extent of each opposing end with regard to the overall extent of the pad been set forth, i.e. at a minimum the claim requires some edge on one portion of the pad and an edge on another portion of the pad longitudinally spaced from the first portion (Note lines 12-16 of claim 1 and the elected species of Figure 14B, lines 27-30 and lines 35-36 of claim 1 also). Likewise it is noted that claim 1 does not require the cavity opening and restriction be at longitudinal terminal ends of the cavity on lines 9-10 (Note the Figures of the elected species 1-8). It is also noted that the bonding claimed on lines 20-23 of claim 1 includes indirect as well as direct bonding and the specifics of the extent and location of the portions other than having to be "facing" have also not been claimed, i.e. does not preclude bonding by monolithic formation, i.e. does not require direct but not monolithic bonding of portions which are spaced or separated from one another, i.e. can be coextensive portions of fold. The terminology "near" on line 23 is considered relative absent claiming of specific dimensions with regard thereto. Also with regard

to lines 20-24 and 31-34 see the discussion in paragraph 11 supra. With regard to lines 27-30 see not only discussion infra but also note that such do not require narrowing from one end of the cavity to the other and/or from the cavity opening to the finger restriction portion only just some narrowing of some portion in the direction from the first edge to the second edge. Finally it is noted that the claims do not require the insertion of the finger in the cavity for applying the pad to the wearer. Also the specific dimensions of the terminology “mini” have not been set forth, i.e. “mini” only requires the sheet be smaller than some portion of the remainder of the pad. With regard to the first edge of claim 7, see the discussion of claim 1 supra. It is also noted that the claim does not require the front edge, opening and restriction be only at such percentage from the first edge. Therefore, claim 7 is interpreted to require at least some portion of the cavity opening and front edge of the mini-sheet be at a location 40% from some portion of the first edge and that at least some portion of the restriction be at a location 90% from some portion of the first edge. Also the terminology “by a predetermined distance” in claim 9 is considered relative absent the claiming of specifics thereof. Claim 21 is interpreted to require a mini-sheet attached so as to be in direct contact with the opposite face portions it covers except for the cavity defined therebetween in addition to the pad of claim 1. Noted also Response to Arguments section infra.

Claim Rejections - 35 USC § 102

14. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

15. Claims 1, 6-7, 9, 12-14, 18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wierlacher '093.

Claim 1: See Claim Language Interpretation section supra and '093 at Figures, especially Figures 2-3, 5b, and 6-9, page 4, first full paragraph, page 6, lines 15-23, page 7, lines 3-30, page 8, lines 12-17, page 9, lines 8-10 and third full paragraph, page 14, line 18-page 15, line 26, page 16, second and third full paragraphs, sentence bridging pages 17-18, page 19, line 8-page 22, line 22, page 24, line 3-page 26, line 18, page 26, line 26-page 27, line 1, i.e. the pad is at least absorbent layer 24 which is adjacent the pudendal region and received in the groove between the labia majora, i.e. an absorbent interlabial pad, and which has an elongate shape, a face side adapted to face the body, adjacent 20a, and an opposite face adapted to face the garment, first and second edges at opposing ends and along a longitudinal direction of the interlabial pad, see the Claim Language Interpretation section supra and edges 31, 32a, 32b, 46-48 and/or 50-56, e.g. at least a portion of 52, see Figures 3, 2 and 6, and at least a portion of ridge 50, respectively, a cavity, i.e. defined by ridge 50, see portions denoted 46, 48, 50 in Figure 1, 46 and 48 in Figure 2, 56 and 54 in Figure 3, 50-56 in Figure 5b, Figure 6 and Claim Language Interpretations section supra, formed on the opposite face along the longitudinal direction, see cited portions, e.g., page 20, first full paragraph, the cavity being formed between the opposite face and a mini-sheet piece, see Claim Language Interpretation section supra and see Figures 2, 5b, and 6 and page 9, lines 8-10 and the paragraph bridging pages 26-27, and a cavity opening, e.g. between 58 and 40, see again page 20, first full paragraph, formed at one end of the cavity, e.g. the front of the ridge 50, a finger restriction portion at an opposing end of the cavity, e.g. ridge 50 adjacent 48 and/or 54, wherein the mini-sheet, e.g. 58, covers a portion of the opposite face from one lateral side to the other and has a length in the longitudinal direction (Note again the Claim Language Interpretation section supra especially with respect to the terminology "mini") along

the opposite face that extends from the second edge of the pad to an intermediate position along the longitudinal direction between the first and second edges of the pad, see Figure 2, length 42, the second full paragraph on page 9 and the paragraph bridging pages 26-27, e.g. if 58 extends less than 50% of the length of the article, includes extension from some portion of a second edge, e.g. 48, some portion of 46, to a position intermediate a first edge and the second edge, e.g. the position of the front edge of 58 in Figure 2 relative to a portion of 52 (it is noted that the length is not claimed as being that between terminal ends of the mini-sheet and doesn't require only extension between such edges/portions of such edges), the finger restriction portion is defined by two facing portions of a fold, e.g., bending lines of ridge 50, formed in the opposite face "near", see the Claim Language Interpretation section supra, the second edge which are bonded, i.e. directly or indirectly, to each other at least at a respective portion thereof (see Claim Language Interpretation section supra and portions of opposite face adjacent 48 with respect to the bending lines of ridge 50, Figures 2 and 6, e.g. portions of opposite face on opposite sides of bending lines at 48 are monolithically formed with each other), a cross sectional area of the cavity gradually narrows along the longitudinal direction of the pad in a direction proceeding from the first edge toward the second edge, e.g. adjacent 48 the cavity is narrows in width along the Z-axis, see Figure 2 in the Z-direction from 58 to 48, and along the Y-axis, i.e. see fold line below 48 in Figure 2 which slants slightly from front to rear (Note again the claim does not require narrowing only from the opening to the another end or along the longitudinal axis) or along 54 from 48, wherein the fold formed in the opposite face forms a protruding portion, i.e. at least a portion of 50, protruding from the face, i.e. another portion of the face, adapted to face the body, e.g. see Figure 2 and 48 relative to at least a portion of 52, a first planar portion, i.e. some planar

portion of ridge 50, at one side of the protruding portion, e.g. upper surface 20a of such portion , and a second planar portion at another side of the protruding portion, e.g. the lower surface 20b of such portion, being substantially parallel to one another, see Figure 2, and wherein the protruding portion extends in the longitudinal direction from the first edge to the second edge of the interlabial pad, see Claim Language Interpretation section supra and discussion supra. Claim 1, lines 1, 7-8, 9-10, 17-18 and 29-30 recite function, capability or property of the structure therein. Therefore, and in light of the portions of '093 cited supra, it is the Examiner's first position that the '093 reference explicitly teaches such function, capability or property. In any case, i.e. the Examiner's second position, as noted supra the claim language recites functions, properties or capabilities of the structure set forth in claim 1. The '093 reference at the very least teaches the structure of claim 1. Therefore there is sufficient factual evidence for one to conclude that such same structure of '093 also inherently includes such claimed functions, properties and capabilities, see MPEP 2112.01. Note again the Claim Language Interpretation section supra especially with respect to the terminology "mini".

Claim 6: See Figures and cited portions of '093 supra, e.g. an interval as seen in Figure 2 is less than the length of 42 which is one third of the total length of the pad but more than the length of 58 which, preferably, is up to 10%, i.e. the interval is 10% to 80% of the total length of the pad with sufficient specificity, see MPEP 2131.03. It is noted that what specific length of the face constitutes "a length in the longitudinal direction" as claimed has not been explicitly claimed, e. any length in the longitudinal direction of the face is "a length", not required to be, e.g., the maximum length or length along the longitudinal centerline. Note also Figure 7 and the extension from opening 66 to the terminal ends of the article.

Claim 7: See discussion supra in the Claim Language Interpretation section supra and with respect to claim 6 supra and 18 infra, the Response to Arguments section infra and the Figures, i.e. the '093 device includes at least some portion of the cavity opening which proceeds from some portion of a front edge of the minisheet at a location 40% from some portion of a front edge of the pad, i.e. some portion of the opening, e.g. between 58 and 40, and mini-sheet front edge, e.g. the edge of the mini-sheet adjacent 40, is 40% from some portion of edge 52, and at least some portion of the restriction, e.g. some portion of ridge 50, see discussion of claim 1 supra, is at a location 90% from some portion of a first edge of the pad, e.g. edge 52 at 32a.

Claim 9: See Claim Language Interpretation section supra and Figures, esp. 2-3.

Claims 12-14: These claims recite functions, properties or capabilities of the structure set forth in claim 1. If not already taught by '093, see the portions cited supra, the '093 reference at the very least teaches such structure of claim 1. Therefore there is sufficient factual evidence for one to conclude that such same structure of '093 also inherently includes such claimed functions, properties and capabilities, see MPEP 2112.01.

Claim 18: Note again that what respective specific lengths of the mini-sheet and pad constitutes "a length" and a "longitudinal length" as claimed has not been explicitly claimed, i.e. any length or longitudinal length is "a length" or a "longitudinal length, respectively, e.g. see length from point in front of back end 42 and point in back of length 42 at lateral side edges in Figures 2-3 as compared to length of the longitudinal centerline, and paragraph bridging pages 26-27, i.e. longitudinal extension of aid is between 50% and 80% of a, i.e. some, "length" or "longitudinal length" of the pad.

Claim 21: See Figure 5b, i.e. the mini-sheet is attached so as to be in direct contact with the opposite face portions it covers except for the cavity therebetween, and Figure 2, e.g. it is opposite to the cavity opening, e.g. the intersection of 40 and 42.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 24-25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wierlacher '093.

Claims 24-25 require the interlabial pad has a longitudinal length between 50 mm and 160 mm, more specifically, a longitudinal length between 80 mm and 130 mm. However, see page 26, third full paragraph and last three lines of page 24, and thereby '217 at page 3, lines 21-26, of '093 (note the terminology "about" allows some tolerance or leeway from the value it modifies) which teach the length of the article ranges between about 4 and 8 inches (about 101.6 mm-203.2 mm). Therefore, since such overlap or touch the claimed range with "sufficient specificity", it is the Examiner's first position that '093 teaches the claimed range. Note MPEP 2131.03. In any case, i.e. the Examiner's second position, since the prior art overlaps or touches the claimed range, a prima facie case of obviousness exists, see MPEP 2144.05 (Note also, e.g., the paragraph bridging pages 29-20 of the instant specification, e.g. does not disclose any criticality of the preferred range relative to the broader range).

Response to Arguments

18. Applicant's remarks with respect to the informalities have been noted but are either deemed moot in that they have not been repeated or not persuasive for the reasons set forth supra. It is noted that Applicants arguments regarding claim 7 are narrower than the claim language, disclosure and/or evidence of record, i.e. where is it set forth that in order to receive a finger the length is restricted to twice the length of a finger and if such is restricted, i.e. required, why is it not claimed (Note under 35 U.S.C. 112, first paragraph, if a feature critical or essential to the practice of the invention is not included in the claim(s), the invention is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976)). Applicant's remarks with regard to the prior art are narrower than the claim language and the teachings of the prior art as set forth supra, e.g. contrary to the arguments at, e.g., page 15, lines 2-3 and 17-18 location or extension with regard to terminal longitudinal ends of the pad are not required by the claim language. Note especially Applicant's remarks on page 15, lines 13-16 with regard to the elected species of Figure 14B. Also, note again, e.g., the Figures of Osborn '235 already of record.

Conclusion


19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
January 22, 2008